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10/735,661

12/16/2003

Akihiro Miyazaki

2003\_1820

2854

513 7590 06/06/2008

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WASHINGTON, DC 20006-1021

EXAMINER

NGUYEN, STEVEN H D

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 73-78 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: these claims includes the new limitations which does not include the old limitation as stated by the applicant's response which filed on 12/6/07.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 73-78 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. The amendment filed on 12/06/2007 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because the limitations which includes in the new claims are not obvious with the old claims.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

### ***Response to Arguments***

3. Applicant's arguments filed 4/24/2008 have been fully considered but they are not persuasive.

In response to pages 2-3, the applicant states that the applicant does not submit a new invention because these set of claims have a same preamble such as data reception method/apparatus. In reply, the examiner which does not restrict the claims based on the preamble, restricts the claims based on the body of the claims. Furthermore, the applicant states that the applicant only amends the claims in order to narrow the scope of the canceled claims. However, the examiner disagrees with the applicant because if the applicant amends the claims to narrow the scope of the canceled claims. Then, the double patent rejection must be stand. for example, the patent claim A and B, the original claim of present application discloses A and B with some words deleted from the claim and the amended claim discloses A, B and C. Then, the double patent rejection must be stand. However, this is not the case because the examiner can not map between the canceled claim and newly present claim. Furthermore, the examiner agrees with the applicant the MPEP does not prevent the applicant to narrow the scope of the claim. However, the MPEP does not allow the applicant to submit a new invention after mailing a first action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven H.D Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jayanti Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven H.D Nguyen/

Primary Examiner, Art Unit 2619